IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

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JUDGMENT

Madan Gopal Sharma
vs.
Smt. Bhanwari Devi.

S.B.CIVIL SECOND APPEAL NO.335/2005 UNDER SECTION 100 CPC AGAINST THE JUDGMENT AND DECREE DATED 15.7.2005 PASSED BY SHRI KAILASH CHANDRA SHARMA, ADDITIONAL DISTRICT JUDGE NO.1, BIKANER IN CIVIL APPEAL NO.70/2005.

DATE OF JUDGMENT ::: 24.4.2006

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr. Sajjan Singh, for the appellant.
Mr. MS Purohit, for the respondent.

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BY THE COURT:

Heard learned counsel for the parties and perused the record.

The plaintiff/respondent filed a suit for eviction of her tenant/appellant/defendant on the grounds including personal bonafide necessity. The plaintiff pleaded that the

shop in question is required for the business of his retired husband and for business of his son. The two courts below concurrently after appreciation of evidence held that the plaintiff proved bonafide need.

Learned counsel for the appellant submits that the plaintiff's husband retired in the year 1988 whereas the suit has been filed in the year 1992. The plaintiff's son was in service at Kuwait at the time of filing of the suit and the ground for eviction on the basis of the plaintiff's son's need was inserted by amendment of plaint by the plaintiff. That amendment should not have been allowed by the courts below. With above argument, learned counsel for the appellant also submitted that the suit on the basis of need of the plaintiff's son was barred under Order 2 Rule 2 CPC.

I have considered the submissions of learned counsel for the appellant and perused the reasons given by the two courts below.

The plaintiff cannot be condemned for filing the suit for eviction of tenant which is within less than five years period from the date of retirement of her husband for establishing business of the husband. The plaintiff, when the cause of action accrued for need of his son, pleaded the same on the basis of necessity of the plaintiff's son. No question arises for the suit being barred by Order 2 Rule 2 CPC. It is not the case of the plaintiff that at the

time of filing of the suit, there was cause of action for eviction of tenant because of the necessity of the son of the plaintiff. After going through the reasons given in the impugned judgments of the two courts below, this Court is also of the view that the plaintiff fully proved his need.

In view of the above, I do not find that any substantial question of law arises in this appeal, therefore, this appeal deserves to be dismissed.

At this stage, learned counsel for the appellant prayed that sufficient time may be granted to vacate the suit premises because the appellant is running his business in the suit shop since long and he will have to make alternative arrangement and wind up his business.

Learned counsel for the respondent submits that more than eight months have already passed from the decree of the appellate court.

Looking to the totality of the facts, this Court deems that the appellant be granted one year's time to vacate the suit shop.

Therefore, it is ordered that in case, the appellant furnishes a written undertaking before the trial court within a period of one month from today that he shall hand over the vacant possession to the landlord by or before 30.4.2007 and shall not part with the possession or sublet the suit premises during this period and shall pay all the arrears of rent and decreetal amount, if due, within a

period of two months from today before the trial court or directly to the landlord, the decree under challenge shall not be executed till 1.5.2007. The appellant shall also deposit the rent month by month by 15th day of each succeeding month of his tenancy in the trial court.

In case of non-compliance of the order or default in payment of rent mentioned above, the decree shall become executable forthwith.

With the aforesaid concession, this appeal is dismissed.

(PRAKASH TATIA), J.

S.Phophaliya